



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/171984

PRELIMINARY RECITALS

Pursuant to a petition filed February 10, 2016, under Wis. Admin. Code § DHS 10.55, to review a decision by the Community Care Inc. in regard to Medical Assistance (MA), a hearing was held on March 23, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly reduced the petitioner's Supportive Home Care hours.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Community Care Inc.
205 Bishops Way
Brookfield, WI 53005

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The petitioner is 20 years old. He is developmentally delayed. He is 6' 7" tall and weighs 275 pounds. He lives with his former foster family. He still attends an all-day high school program.

The petitioner requires extra supervision when going into the community because of sexually inappropriate behavior. At home he is able to watch TV. He generally will remain in the same place doing the same thing until he is directed to a new place or task.

3. The petitioner's former foster mother states that she has hired non-family caregivers to care for the petitioner. The Family Care Program is not paying any non-family caregivers. The only caregivers paid through the Family Care Program are the former foster mother and her husband, the petitioner's guardian.
4. On January 28, 2016 the Family Care Program sent a notice to the petitioner's guardian stating that the petitioner's supportive home care hours would be reduced effective February 16, 2016. The notice explained this reduction as follows:

Description of current level: Shower-4x/wk, dress/undress-1x/day, hair care-1x/day, brush teeth-2x/day, nail care-1x/wk, shave-1x/wk, changing incont-1x/day, med appt-1x/mo, housekeeping-1x/wk, laundry-1x/wk, linen change-2x/wk, supervision-8hs/day, assist w/meds-3x/day

New level after reduction: Shower-7x/wk, dress/undress-2x/day, hair care-same, brush teeth-same, nail care-2x/mo, shave-3x/wk, change incontinence-non, med appt-same, housekeeping-same, laundry-same, linen change-1x/wk, supervision-2hrs/day, assist w/meds-same, meal prep-5x/we (lunches), grocery/med shop-1x/mo.

5. On February 12, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

The Family Care program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code, Chapter DHS 10.

The Managed Care Organization (MCO) must develop an Individual Service Plan (ISP) in partnership with the client. Wis. Admin. Code, §DHS 10.44(2)(f). The ISP must reasonably and effectively address all of the client's long-term needs and outcomes to assist the client to be as self-reliant and autonomous as possible, but nevertheless must be cost effective. While the client has input, the MCO does not have to provide all services the client desires if there are less expensive alternatives to achieve the same results. Wis. Admin. Code, §DHS 10.44(1)(f); DHS booklet, Being a Full Partner in Family Care, page 9. ISPs must be reviewed periodically. Admin. Code, §DHS 10.44(j)(5).

Wis. Stat., §46.287(2)(a)1 provides that a person may request a fair hearing to contest the denial of eligibility for the program and the reduction of services under the FCP program, among other things, directly to the Division of Hearings and Appeals. There is little in the way of policy or rules for supportive home care. I am aware that the Department of Health Services, in its personal care worker policy, allocates a maximum of minutes per day for various activities of daily living. See the Prior Authorization: Personal Care Screening Tool Allocation Chart at <https://www.forwardhealth.wi.gov/WIPortal/Online%20Handbooks/Display/tabid/152/Default.aspx?ia=1&p=1&sa=47&s=3&c=565&nt=Allocation+Based+on+Frequencies+Indicated+in+the+Personal+Care+Screening+Tool>. There is no policy with respect to supervision time during the day. MA card service does not provide any supervision time, and I am not aware of a family care policy that addresses this.

In this case the main reduction in SHC hours was in the area of supervision. That was reduced from 8 hours per day to 2 hours per day. Family Care reasoned that the petitioner attends high school all day. In

the evening when he is at home, supervision is not required. If he goes into the community, supervision is required due to sexually inappropriate conduct. They reason that 2 hours per day is sufficient.

The petitioner argues that he needs supervision all the time. The former foster family was upset about any reduction from Family Care as that reduces the amount of money that they receive from the program. The family has provided a schedule, which they believe shows a need for 24/7 supervision for the petitioner. From the schedule it is important to note that the petitioner is gone from 6:20 a.m. to approximately 4:15 p.m. He is at home the remainder of the night until he goes to bed around 10:00 p.m. On the weekends the schedule shows that the petitioner is mainly at home, not in the community.

It is significant that the main time spent in the community is when the petitioner goes to school. This time is supported through school services, not services provided by the Family Care Program. It is also important to note that the petitioner mentions worker in the schedule. The only paid workers are the petitioner's former foster family. The Family Care Program does not pay any third party workers who do not reside with the petitioner in the home.

The Family Care Program is designed around the informal supports already in place. Given the level of functioning of this petitioner, I do not believe that he needs Supportive Home Care services for every wakeful hour. There is no history of violent behavior or violent outbursts. His IEP states that he is able to complete tasks on his own. He needs to be directed every five minutes, but that is for completion of the task. If he is not redirected, he will sit and stay in one spot. Allowing time for every Activity of Daily Living plus an additional 2 hours per day for supervision in the community is reasonable.

CONCLUSIONS OF LAW

The agency correctly reduced the petitioner's Supportive Home Care hours.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in

this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 19th day of May, 2016

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on May 19, 2016.

Community Care Inc.
Office of Family Care Expansion
Health Care Access and Accountability